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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

Note verbale dated 19 February 2007 from the Permanent Mission of Australia to the United Nations Office at Geneva addressed to the Office of the High Commissioner for Human Rights

The Permanent Mission of Australia to United Nations Office at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to refer to the request for information from the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, concerning the death in custody of Cameron Doomadgee (Mulrunji), which was contained in Mr. Alston's letter of 17 October 2006.

The Government's response to this request, dated 16 February 2007, is attached. The Permanent Mission of Australia respectfully requests that this response and its attachment,* the inquest findings of the State Coroner of Queensland on the case, be published as an official document of the United Nations for circulation at the fourth session of the Human Rights Council.

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* Reproduced in the annex as received, in the language of submission only.

Annex

16 February 2007

Mr. Philip Alston
Special Rapporteur on extrajudicial, summary or arbitrary executions
OHCHR
Special Procedures Services
United Nations Office at Geneva
CH-1211 Geneva 10

Dear Mr Alston,

Request for information from the Australian Government on certain matters relating to the death in custody of Cameron Doomadgee (Mulrunji) in November 2004

The Australian Government presents its compliments to the Special Rapporteur on extrajudicial, summary or arbitrary executions and has the honour to refer to your letter dated 17 October 2006 concerning the death in custody of Cameroon Doomadgee (Mulrunji)[1] in a cell at the Palm Island police station in November 2004.

The Australian Government hereby provides information in response to your letter on the results of various investigations under way, detailed information on any penal or disciplinary sanctions that were imposed, and information relating to any compensation provided to the family of Mulrunji.

The following provides information on developments subsequent to the matters reported to you in April 2006, and reflected in your report to the Commission on Human Rights (E/CN.4/2006/53/Add.1, pp.28-30).

The results of various investigations under way

The Office of the Queensland State Coroner delivered its findings on the inquest on 27 September 2006. A copy of the Coroner's findings is attached. The Queensland Government tabled its response to the findings in Parliament on 2 November 2006. The Queensland Government supports in-principle the recommendations made by the Deputy State Coroner, some of which have already been implemented. For example:

- the coroner recommended a re-emphasis of the principle that police should use arrest as a last resort. The Queensland Government has always supported this principle. The Police Powers and Responsibilities Act 2000 will be amended to insert an example to reinforce the principle. The Queensland Police Service's Operational Procedures Manual will be likewise amended. Police training in arrest and custody issues, particularly relating to Indigenous people, will also be reviewed. The Queensland Police Service has conducted a

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[1] The Doomadgee family has requested that the deceased man be referred to by the name Mulrunji. In accordance with the family's wishes, the name Mulrunji will be used throughout this document.

review of all training relevant to the Acting State Coroner's comments. The review identified some gaps in training together with proposed strategies to address those gaps. The review suggested that no major changes are required, but that improvements could be made to the existing packages. These improvements will be progressed as a matter of priority;

- the Coroner recommended enhanced diversionary services on Palm Island. The Queensland Government has already established a cell visitors' program. An integrated diversionary services model, including community patrols, will be developed in consultation with the community. The Government has also approved $496,000 over three years for a cell visitor program to be operated by the Palm Island Men's Business Group Aboriginal and Islander Corporation. This commenced in June 2006;

- the Coroner recommended improved assessment and monitoring of watch-house detainees. The Queensland Police Service will review current processes with advice from relevant departments and Indigenous groups. Amendments to the Queensland Police Service Operational Procedures Manual relating to inspection and assessment of violent, aggressive or non-cooperative prisoners have been developed and approved. In consultation with the Director of Queensland Health's Clinical Forensic Medicine Unit and other relevant health professionals, the Queensland Police Service will review the current process of police assessing prisoners. The review will include an evaluation of policies and procedures of other Australian Police Services. These outcomes will be reflected in the Operational Procedures Manual. The Queensland Police Service will conduct an audit of first aid and resuscitation equipment in watchhouses and review existing training in its use. The Queensland Police Service will continue negotiations with the Queensland Ambulance Service in relation to the ongoing provision of First Aid Training and will examine options for expanding the provision of such training to all officers in 'positions of risk', particularly those in watchhouses;

- the Coroner recommended a range of improvements to investigations of deaths in custody. The Queensland Police Service had previously entered into a memorandum of understanding with the State Coroner and the Crime and Misconduct Commission about the investigation of custodial deaths. The service will seek to review the memorandum of understanding to take account of the Coroner's findings.

- the government remains committed to working with the Palm Island community—and Indigenous people generally—to avoid similar tragedies in the future.

A Steering Committee has been established by the Queensland Commissioner of Police to manage and oversee implementation of the Coroner's recommendations.

On 14 December 2006 the Queensland Director of Public Prosecutions (DPP) announced that no criminal prosecution would be instituted against Senior Sergeant Hurley, the police officer at the centre of the Palm Island inquiry. After reviewing all the evidence provided to the Deputy State Coroner, and in addition to pursuing additional lines of inquiry and evidence, the DPP indicated that the evidence was not

capable of proving that Senior Sergeant Hurley was criminally responsible for the death of Mulrunji.

The DPP subsequently offered to provide her file to the Queensland Attorney-General and Minister for Justice, the Honourable Kerry Shine MP. This offer was accepted and the Attorney-General instructed the Crown Solicitor to commission a second opinion on the matter from the Honourable Sir Laurence Street, AC KCMG QC.

Sir Laurence is a former Chief Justice of the Supreme Court of New South Wales and Lieutenant-Governor. Sir Laurence was assisted by Brisbane barrister Mr Peter Davis SC.

Sir Laurence's opinion has been received, and on 26 January 2007, Attorney-General Shine announced that Sir Laurence believed there is sufficient admissible evidence to support a charge of manslaughter against Senior Sergeant Hurley and that there is a reasonable prospect of a conviction.

The Queensland Attorney-General accordingly instructed the Crown Solicitor to take the necessary steps to initiate a prosecution against Senior Sergeant Hurley as soon as possible.

Information on any penal or disciplinary sanctions that were imposed

As indicated above, the Queensland Crown Solicitor has been instructed to take the necessary steps to initiate a prosecution against Senior Sergeant Hurley as soon as possible. On 30 January 2007, Attorney-General Shine announced that Brisbane barrister Peter Davis SC will head the prosecution of Senior Sergeant Hurley, assisted by barristers David Kent and Jonathan Horton. The Attorney-General stated that he was awaiting advice from the Crown Solicitor about the appropriate manner in which the proceedings should be initiated, that he expected to receive this advice in the coming days and that he would make an announcement thereafter.

Senior Sergeant Hurley has been suspended from duty. On 5 February 2007, an ex officio indictment charging Senior Sergeant Hurley with manslaughter and assault was presented in the Queensland Supreme Court. The matter was adjourned for mention to the Supreme Court on 16 March 2007. Senior Sergeant Hurley was not arraigned and was granted bail.

Information relating to any compensation provided to the family of Mulrunji

No compensation has been paid to the family of the deceased. However, Mulrunji's family was granted legal assistance from Legal Aid Queensland for representation at the coronial inquest.

The Australian Government avails itself of this opportunity to renew the assurances of its highest consideration.

Caroline Millar
Permanent Representative

QUEENSLAND
COURTS

OFFICE OF THE STATE CORONER

FINDING OF INQUEST

CITATION:	**Inquest into the death of Mulrunji**
TITLE OF COURT:	Coroner's Court
JURISDICTION:	Palm Island & Townsville
FILE NO(s):	COR 2857/04(9)
DELIVERED ON:	27 September 2006
DELIVERED AT:	Townsville
HEARING DATE(s):	3 March 2005, 29-30 March 2005, 6 April 2005, 1-5 August 2005, 19 August 2005, 5 October 2005, 27 February - 3 March 2006 & 16 August 2006
FINDINGS OF:	Ms Christine Clements, Acting State Coroner
CATCHWORDS:	**CORONERS: Inquest, death in custody, Palm Island, arrest and policing, diversionary centre and community patrols, assessment and monitoring of health upon arrest, supervision and care in custody, investigation into deaths in police custody.**

REPRESENTATION:

Counsel Assisting:	Mr Terry Martin, SC & Mr Mark Plunkett
Ms Tracey Twaddle:	Mr Peter Coombe (ATSILS Townsville)
Jane Doomadgee, Elizabeth Doomadgee & Valmai Aplin (Sisters of Mulrunji):	Mr Peter Callaghan, SC & Mr Tony Moynihan (instructed by Legal Aid Queensland)
Senior Sergeant Christopher Hurley:	Mr Steve Zillman (instructed by Gilshenan & Luton Lawyers)
Sergeant Michael Leafe, Police Liason Officer Lloyd Bengaroo, Constable Kristopher Steadman & Detective Sergeant Darren Robinson:	Mr Paul Brown (instructed by Gilshenan & Luton Lawyers)
Commissioner of Queensland Police Service:	Mr Peter Baston (instructed by Queensland Police Service Solicitors)
Palm Island Aboriginal Council:	Mr Andrew Boe (instructed by Boe Lawyers)
Human Rights & Equal Opportunity Commission:	Mr Jonathon Hunyor
Aboriginal & Torres Strait Islander Legal Service:	Mr David Gardiner (ATSILS Brisbane)

The man known by his tribal name, Mulrunji, was thirty six years of age when he died. He was a fit, healthy man. He lived with his partner, Tracey Twaddle, on Palm Island. She was Mulrunji's partner for some ten years. She described him as having a positive outlook on life; proud to provide for his family and friends by his skills as a fisherman and hunter. He was not a trouble maker and had never been arrested on the Island.

In her poignant statement to this court she said that she and Mulrunji looked forward to growing old together.

The primary question for this inquest to determine is what happened to cause this resident of Palm Island to end up dead on the concrete floor of the watch house?

On the nineteenth of November 2004, the day that Mulrunji died, there had been some problems for three indigenous women who lived on Palm Island. Sisters Gladys, Andrea and Anna Nugent claimed Gladys' de facto husband, Roy Bramwell, had assaulted them all. One was so badly injured she was airlifted to the Townsville Hospital for medical treatment.

Senior Sergeant Christopher Hurley, who was the officer in charge on the island, attended the Palm Island Hospital to investigate the women's complaints. At the completion of initial inquiries, Gladys Nugent asked Senior Sergeant Hurley to help her obtain her medication from the Bramwell house in Dee Street and drop both sisters home. She was fearful of more confrontation and the risk of injury at the Bramwell house. It is ironic that Senior Sergeant Hurley, the officer whose actions regarding Mulrunji's death are under scrutiny, was acting proactively and appropriately to assist and protect two women who had been assaulted by a family member. We also know that it was not uncommon for Senior Sergeant Hurley to be called upon to assist women in the community to return to premises to retrieve items of property after incidents of violence. A similar situation arose in relation to the incident involving Neville Bonner which has been referred to in this hearing. It is entirely consistent with Senior Sergeant Hurley's position as the ultimate figure of power and authority on Palm Island that he was relied upon by the women on this occasion.

Senior Sergeant Hurley agreed to assist Gladys Nugent and together with Police Liaison Officer Lloyd Bengaroo, he drove her to Dee Street in the police vehicle. The vehicle was a Toyota dual cabin hilux with a modified security cage at the rear. Both men were in police uniform.

<u>The arrest of Patrick Bramwell and Mulrunji</u>

Gladys Nugent went inside to retrieve her medication. A young man, Patrick Bramwell, was outside the house and clearly intoxicated. He was swearing at the police and his grandmother complained to the police about his behaviour. Senior Sergeant Hurley arrested him.

Police Liaison Officer Bengaroo told investigating police that Mulrunji had been walking past when Patrick Bramwell was being arrested. The two men knew each other. Mulrunji commented directly to Lloyd Bengaroo, challenging him as to why he should help lock up his own people. The indication was that Mulrunji was intoxicated.

Lloyd advised him to walk down the road or he too would be locked up. When Senior Sergeant Hurley got back in the car he asked Bengaroo what the person had said - he clearly had not heard the conversation. When Bengaroo's account was given, Hurley's response was that he would lock him up. The only additional "event" was that having walked off down Dee Street, Mulrunji turned and swore at the police officers. Senior Sergeant Hurley then drove down to where Mulrunji was standing and arrested him.

I do not determine the lawfulness of this decision but clearly the situation could easily have been addressed by means other than arrest. Senior Sergeant Hurley was reliably told by his resident liaison officer the identity of the person and that he lived on the island. The fact that the senior serving officer did not know him after two years on the island was an indication that he was not a troublemaker. It was completely unjustified to decide to arrest, particularly if that decision was solely influenced by a desire to check the computer for any outstanding warrants. That is not a basis for arrest. Given that Mulrunji had walked away and was clearly not impeding anyone there was always the discretion to do nothing or simply speak with Mulrunji.

What is clear from the evidence is that Senior Sergeant Hurley felt the need to exert his authority, ostensibly on behalf of the Police Liaison Officer who did not have direct authority to do more than warn Mulrunji. The similarity to the situation of Patrick Bramwell's use of language was not compelling given that Mulrunji had heeded the warning and walked on without further involving himself in proceedings. Despite Mulrunji's protests he was arrested and told by Hurley that he was going to the watch house.

<u>What happened after Mulrunji arrived at the Police Station?</u>

After dropping off Gladys Nugent, Senior Sergeant Hurley drove to the garage area at the rear of the police station with Lloyd Bengaroo in the passenger seat. Patrick Bramwell and Mulrunji were in the rear cage area.

It was about twenty past ten in the morning when Mulrunji was arrested and the custody register was completed at 10.26am indicating he had been charged with the offence of public nuisance and lodged into custody.

As Senior Sergeant Hurley and Officer Bengaroo arrived at the station they observed a disturbance outside the shop. Shortly after this Sergeant Leafe came through the back of the police garage with Roy Bramwell. Senior Sergeant Hurley told him to take him into the station so that he could speak to him about the assault allegations. Sergeant Leafe's evidence was that he went inside the police station, seating Bramwell and telling him to wait. He came back to help Senior Sergeant Hurley but when he realised there was a second person in the van, he instead went to close the van door before walking ahead of Hurley and Mulrunji into the police station. He walked down the passageway, opening the door through to the cell area and then to the door of cell number 2. There was also another police officer outside at the time. Constable Kristopher Steadman had recently arrived on the island to take up an appointment. He happened to be approaching the police station from the rear at this time.

There is little doubt that Lloyd Bengaroo opened the rear door of the police station and clipped it open, remaining further back within the garage area when Senior Sergeant Hurley went to the back of the cage to bring the men into the station. There is also no doubt that Alfred Bonner was walking past the rear of the station and looked into the garage area. He was interested no doubt in what was happening because he had just complained to Sergeant Leafe about Roy Bramwell assaulting his relations. Indeed he had confronted Roy directly at the shop and it was then that Sergeant Leafe had intervened, removing Bramwell to the police station.

Also in close proximity was **Florence Sibley** (known on the Island as Penny). She wanted to see Police Liaison Officer Bengaroo. It is common ground that when Mulrunji was removed from the rear of the vehicle, Patrick Bramwell was still in the back of the cage area. Mulrunji was removed from the rear of the cage still protesting his arrest and detention and resisting being taken into the police station. There is no doubt he was uncooperative and indeed, that he struck out at Senior Sergeant Hurley with a back handed clenched fist, connecting with the police officer's jaw. Senior Sergeant Hurley was clearly surprised at this action which was inconsistent with his experience of the response from Palm Islanders to his authority.

Mrs Sibley was waiting at the back of the police station to see Lloyd Bengaroo. She heard swearing from the back of the police van as it arrived. She saw the incident and confirmed that Mulrunji struck and hit Senior Sergeant Hurley in the face. She said she saw the Senior Sergeant hit Mulrunji *" ...in the side, or the rib".* [2]

In court she demonstrated that the hit was to the right hand side of Mulrunji's ribs. She said Mulrunji made a verbal response to being hit and after that she did not hear anything more from him. Her recollection was that two police officers were involved in getting Mulrunji out of the van. She accepted she may have been mistaken about this as Sergeant Leafe gave evidence that he too had come into the back of the station with Roy Bramwell. Constable Steadman was also outside the back of the police station standing at the front passenger side of the vehicle. He remained standing in the vicinity while the vehicle was unloaded.

Mrs Sibley does not appear to have seen the fall through the door. She described Mulrunji being dragged in by two arms with his feet dragging. She said she did not see anything else.

When cross examined by Mr Zillman, Mrs Sibley made concessions when it was suggested she might be mistaken. The overall impression was that she was truthful. She clearly displayed a negative reaction to the fact that Mulrunji was resisting the police officer and did not appear to be showing bias against the police. She stated the language she heard Mulrunji use to the police officer. She stated she did not see whether Senior Sergeant Hurley had formed a fist when she says he hit Mulrunji. There was variation in the exact description of the contact she says was initiated by Senior Sergeant Hurley to Mulrunji. The first description had been a *"jab to the hip"* whereas under cross examination she responded to Mr Zillman that it was more an underarm motion. Despite some persistent questioning and her obvious physical and

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[2] T 396 L 36

emotional discomfort in giving evidence, she maintained that Mulrunji was *"... standing up when Chris hit him".* [3]

She also maintained that Mulrunji had been making a hell of a noise before he was hit by the Senior Sergeant and that she heard nothing from Mulrunji after that blow. She clarified that she heard him singing out again after he was inside. Mr Callaghan SC, for the family, asked Mrs Sibley about Senior Sergeant Hurley's reaction when Mulrunji hit him. She said Chris must have got wild *"... cos Cameron punched him in the face".* [4]

She went on to explain, *"Cause I can seen Chris' face, he- you know, he wasn't happy after Cameron hit him in the face, you know. I just seen what I seen."* [5]

Mr Alfred Bonner was not in a position to see much of the detail of what happened. He said he saw the two men struggling and what he believed to be the police officer moving his arm over in an action suggestive of a blow to Mulrunji. His version was not overstated and he did not seek to make more of what he had observed; restricted as it was by looking into a darker space. He said he was looking at the rear view of Senior Sergeant Hurley as he grappled with Mulrunji who was in front of him.

Police Liaison Officer Bengaroo must surely have seen more than what he has told this court given his proximity. There was however, evidence from Mrs Sibley that she saw Police Liaison Officer Bengaroo and that she, her granddaughter and Officer Bengaroo went to withdraw money from the bank. It is not entirely clear when this happened as there is no record of a withdrawal on that day. Officer Bengaroo's initial account was that he opened the back door of the police station and remained there, holding it open but not going inside until later. Some of his other statements indicate he went into the station and walked up the hallway which does nothing but confuse his evidence and make it less reliable. His accounts vary to such an extent regarding factual matters that he must be considered unreliable.

I feel some sympathy for Mr Bengaroo whose role was menial and without authority or apparent respect from either his own community or the Senior Officer in Charge on the island. Indeed, Senior Sergeant Hurley's own evidence was somewhat disparaging of Lloyd. An inquiry was made about Lloyd's access to information on the police computer system. Senior Sergeant Hurley did not consider that Lloyd was authorised or that he had capacity to understand the system. The reality was that Police Liaison Officer Bengaroo was isolated from the police service and his own community both of whom, I have no doubt, he was trying to serve. However, torn between the two in an impossible role, he was emasculated and powerless to exert influence on the unfolding tragedy.

As with many other witnesses, he had difficulty in giving his evidence in court and in making statements to investigating officers. His almost inarticulate responses and the reticence with which he gave his answers, was nevertheless informative. Mr Martin,

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[3] T 402 L 48
[4] T 760 L 32-33
[5] T 760

SC assisting, submitted that Bengaroo's answers could not be relied upon but I believe Bengaroo still provided valuable information to this inquest.

He warned Mulrunji away when Mulrunji first spoke with him in Dee Street. He told Mulrunji that if he stayed he would be locked up. When interviewed by the police after Mulrunji's death, his answers indicated he chose not to see too much in case it invited trouble with Mulrunji's family.

The inference I conclude from his evidence of what occurred at the police station is that he was careful not to see or intervene in a situation where he knew he had no power to influence what happened. His role only caused him distress and he felt he could do nothing without further risk of ridicule and censure from his own people.

When interviewed by Inspectors Webber and Williams on 20 November 2004, Inspector Webber asked Bengaroo whether he was watching what happened after the fall. Bengaroo said, *"No I wasn't"*. [6] Inspector Webber asked, "*What were you doing? What, how come you were standing there?*" Bengaroo said, *"I can't remember. I just stood there because I was thinking, um, if I see something I might get into trouble myself or something. The family might harass me or something you know"*. To which Inspector Webber merely responded, *"Oh, OK."*

How these senior investigating officers could have let that response remain unexplored was as wilfully blind as Bengaroo chose to be.

Constable Kristopher Steadman was interviewed by the Crime and Misconduct Commission officers on 8 December 2004. He had not been interviewed by other investigating police officers. He told the CMC officers he had arrived on Palm Island to commence work on 18 November 2004. He went to the police station on the morning of 19 November before he was to start work at 4pm. He wanted to make phone calls about his furniture.

His view of the incident was somewhat blocked by the vehicle. His evidence was that Senior Sergeant Hurley *"... brought someone around having a bit of a wrestle as they walked along the side of the car to go inside*". [7]

The notes he made in his notebook at the time used different language. There he said, *"He was dragging him towards the station entrance. As they walked inside they've tripped over each other or the stairs"*. [8]

Steadman said he heard Chris get up and say something to the ATSI gentleman, (using Constable Steadman's language.) He said they fell to the floor, together, towards the right into the hallway. He could not see them land but he could see two pairs of feet through the doorway. Constable Steadman did not see Senior Sergeant Hurley hit Mulrunji but he said his view was obscured by the door jamb. It was a very short time before Mulrunji's feet disappeared from his view. When Senior Sergeant Hurley got to his feet, Constable Steadman could no longer see him in the doorway; he was around the corner down the hallway towards the cells. It was when they fell

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[6] P 8 L 253 and following
[7] P 5 L 151
[8] P 5 L 151-154

that Constable Steadman heard Hurley say something to the other person. – "... *he yelled something at him*". [9] Constable Steadman considered the tone to be abusive although he could not recall what was said.

He said it appeared to him that Senior Sergeant Hurley had landed on top of the other person. He didn't see if anyone else was helping Senior Sergeant Hurley take Mulrunji to the cells but he described him being dragged to the cells. He said he waited until everything was clear and then walked into the police station and sat down at a computer. He said it was a short time before Senior Sergeant Hurley returned and turned on the monitor showing two people in the cell. He remembers speaking briefly with Roy Bramwell before leaving the station. He returned later in the morning when he noticed that Chris Hurley seemed flustered and both Senior Sergeant Hurley and Sergeant Leafe seemed to be shaking. He realised that they feared that Mulrunji was deceased in the cell. Constable Steadman asked them if they had checked the pupils. He said he grabbed a torch and went into the cell with Sergeant Leafe and checked his vital signs, his pupils, to see if they were dilated. His chest didn't appear to be rising and he was cold. In Constable Steadman's opinion, "... *he was dead*".[10] The ambulance arrived shortly after this.

The other evidence of significance from Constable Steadman was that he had just arrived on Palm Island expecting to spend six months. He had not chosen to be sent there. He remained only a week, presumably due to subsequent events. I accept his evidence that he had no previous experience of policing in indigenous communities and that he did not receive any additional training or information prior to arriving on Palm Island. This was with the exception of information about housing and secure separate living quarters. He did not know what the role of a police liaison officer was or whether there was any particular approach to be taken to his responsibilities. Of course, he had only just arrived and had not been provided with an initial briefing. The only information he had received about policing in an indigenous community was what he had received at initial training at the academy.

The Medical evidence

The original autopsy examination of Mulrunji's body was performed by forensic pathologist, Dr Guy Lampe. This occurred on 23 November 2004 at the Cairns Base Hospital mortuary. A second autopsy was performed in Brisbane on 30 November 2004 by Associate Professor David Ranson. Professor Anthony Ansford and Dr Byron Collins were also in attendance together with Dr Guy Lampe.

The only external sign of injury was a small oval abrasion in the centre of the right eyebrow measuring 0.4 centimetres by 0.2 centimetres which was bleeding slightly. The right upper eyelid was swollen but there was no haemorrhage of the right eye. The second autopsy examined the right eye area below the skin surface. There was a small amount of contusion (bruising.) The second autopsy also found some deep bruising immediately adjacent to the right side of the mandible and a small (3 centimetre) scalp contusion on the right frontotemporal region of the scalp.

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[9] P 15 L 604
[10] P 12 L 482

Dr Lampe noted that there was no abrasion or boot or shoe impression on the anterior (front) abdominal wall, or the lower chest.

The right sided rib cage showed lateral to anterolateral fractures of four ribs, from the sixth to the ninth inclusively. There was no associated contusion of the muscle area above the fractured ribs, but there was some internal haemorrhage of the muscles above and adjacent to the eighth and ninth rib fractures.

The most significant finding was in the peritoneal cavity. There was at least one and a half litres of blood and clot. The liver was virtually completely ruptured- *"... cleaved in two"* in Dr Lampe's words. The two halves of the liver were only connected by some blood vessels. The portal vein had an oval hole along its posterior surface measuring 1.5 by 0.7 centimetres which was along the line of the contusion extending through the soft tissue. There was localised haemorrhage to the pancreas adjacent to the peri-duodenal haemorrhage.

Both autopsies concluded that the cause of death was intra-abdominal haemorrhage, due to the ruptured liver and portal vein.

The consensus of medical opinion was that severe compressive force applied to the upper abdomen, or possibly the lower chest, or both together, was required to have caused this injury.

I accept that evidence and rely upon it in considering the evidence in this inquest to explain how this injury was caused to Mulrunji.

All the expert medical evidence also concurred that a fall together, side-by-side, of the two men onto a flat surface was unlikely to have caused the injury that occurred. **I accept that evidence.**

Medical witnesses were asked to consider whether the application of a knee or an elbow, whilst Mulrunji was on the hard flat surface, either during or separate to the fall could have caused the mechanism of injury. **This was accepted as a possible means by which the injury could have occurred.**

Dr Lampe noted that the reported changes in Mulrunji's behaviour from aggressive prior to the fall, to passive after the fall, suggests the events surrounding the fall are crucial.

It is noteworthy that the second autopsy did reveal bruising on the left index finger knuckle and right little finger. Again, this was said to be consistent with either punching, or injuries sustained in defensive moves, or during the fall onto the right side.

Finally there was a comment confirming that Mulrunji's blood alcohol content indicated he would have been significantly intoxicated. The blood alcohol level was 292 mg/100mL (0.292) His coordination would have been affected and he would have had less capacity to protect himself from injury in any altercation or fall.

Associate Professor Ranson's plain English language statement is helpful:

> "*In my opinion the death occurred from blood loss as a result of the liver being torn. I believe the liver injury was the result of forceful pressure being applied to the front of the upper abdomen or stomach area. This force squeezed the liver by pushing it up against the front of the spine so that it was nearly split in half.*" [11]

Dr Ranson also said:

> "*A complicated fall where the two individuals fall together from a standing position would not usually cause the liver laceration seen in this man unless during the process of the fall a small area of direct crushing pressure was applied to the front of the upper abdomen with the back or posterior lateral aspect of the body fixed against a hard surface.........If a large person were to fall in an accelerated or uncontrolled fashion on top of an individual who was lying on their back on the ground, such that a small part of their body, for example a knee applied a crushing type force to the upper abdomen, it is possible that such a liver laceration might be caused.*" [12]

Associate Professor Stephen Lynch, who is a specialist general surgeon practising in the field of liver transplant surgery and treatment gave evidence. He discounted any physical possibility of Mulrunji having sustained the liver injury prior to the point of being removed from the police vehicle at the back of the police station. He said Mulrunji would not have been able to struggle, as the evidence suggests, if he had blood in his abdominal cavity at that time. His injuries must have occurred at the time of the fall or afterwards. This is again noteworthy because of the evidence that after the fall, and after Sergeant Leafe had returned from opening the cell door, Mulrunji was no longer resisting and required to be dragged to the cell.

He agreed with other medical opinions that signs of the abdominal injury could be masked by the degree of intoxication.

Most importantly, Dr Lynch was clear that Mulrunji's injuries were so serious that, even if their true nature had been appreciated at the time, it would have been impossible to stabilise his condition sufficiently on Palm Island to allow safe transfer to Townsville, even if a doctor had been in attendance at the time of injury and had commenced resuscitation immediately.

Dr Lynch also agreed with other medical opinions that Mulrunji's injuries were inconsistent with a simple fall through the door of the watch house. He also concurred that the mechanism of injury was a compressive force of very considerable magnitude to the right lower rib cage with the rest of the body otherwise immobilised.

Therefore, he said, the four fractured ribs, liver laceration and portal vein rupture could have occurred as a result of a single injury involving the application of a very

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[11] P 8
[12] Ibid

considerable force anteriorly over the lower right ribs, with the torso otherwise immobilised (against the floor for example.)

Dr Lynch observed that Mulrunji was one hundred and eighty one centimetres tall and weighed seventy four kilos. He also observed that Senior Sergeant Hurley was approximately the height of the watch house door frame. Senior Sergeant Hurley himself informed the court that he was six foot seven inches tall (200.66 centimetres). His build was proportionate to that height.

Dr Lynch then indicated that the:-

> *"… combined mass of the two struggling men, falling together perhaps in an accelerated and less than controlled fashion through the doorway could generate considerable force. This force, if applied over a small surface area (for example a knee contacting the lower right ribs of the deceased) may have been sufficient to cause the injuries sustained.* [13]

Dr Lynch was taken by Mr Callaghan SC through a discussion of the mechanics of such a fall that might result in such an injury. At page 648 of the transcript Dr Lynch agreed that the force applied to Mulrunji's body must have been from the front (anteriorly) of the body or perhaps the right hand side of the body. He agreed that this logically would mean Mulrunji was on his back or on his left hand side. It would be difficult in such a scenario to then explain the injury to the right eye as being incurred in the course of such a fall.

The evidence is clear that Mulrunji died due to blood loss caused by rupture of the liver consequent upon blunt compressive force to the upper abdomen.

<u>The Investigation-</u>

How was the fatal injury caused to Mulrunji?

This was the central issue for investigation. Mulrunji's death was a death in custody, required by legislation to be reported to the State Coroner or Deputy State Coroner. Detective Inspector Aspinall, the Officer in Charge of the Coronial Support Unit in Brisbane, was notified of Mulrunji's death by Detective Inspector Webber of Townsville. This occurred at about 12.30pm on 19 November 2004 and the State Coroner was immediately notified. The Crime and Misconduct Commission had also been notified as were the Ethical Standards Command. However, the State Homicide Investigation Group did not undertake the investigation as stipulated in the State Coroner's Guidelines concerning deaths in police custody.

Quoting from the State Coroner's Guidelines:

> *"Deaths in custody warrant particular attention because of the responsibility of the state to protect and care for people it incarcerates, the vulnerability of people deprived of the ability to care for themselves, the need to ensure the natural suspicion of the deceased's family is allayed and public confidence in state institutions is maintained. Further, a*

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[13] T 646 L 22

> *thorough and impartial investigation is also in the best interests of the custodial officers".*

Elliot Johnson QC wrote in the National Report of the RCADIC:-

> *"A death in custody is a public matter. Police and prison officers perform their services on behalf of the community. They must be accountable for the proper performance of the duties. Justice requires that both the individual interest of the deceased's family and the general interest of the community be served by the conduct of thorough, competent and impartial investigations into all deaths in custody".*[14]

The investigation into Mulrunji's death failed to meet those standards. The police officers initially appointed to undertake investigations were Detective Senior Sergeant Raymond Kitching, from the Townsville Criminal Investigation Branch, and Detective Sergeant Darren Robinson, who was in charge of the Criminal Investigation Branch on Palm Island. They arrived on Palm Island on 19 November, the day Mulrunji died. On my understanding, neither was from the State Homicide Investigation Group. The form 1 report of the death was not forwarded to the State Coroner until the morning of 22 November 2004. It was signed by Detective Senior Sergeant Kitching. The information failed to include any reference to the allegation of assault by Senior Sergeant Hurley upon Mulrunji which had been made by Roy Bramwell to Detective Senior Sergeant Kitching in his video interview on 20 November 2004. That crucial information was not available to the pathologist at the time of the first autopsy.

It was unwise and inappropriate for an officer serving on Palm Island, who was known to be a friend of Senior Sergeant Hurley to be involved in the investigation. It was not the fault of Detective Robinson that this occurred- it was the responsibility of those appointing the investigators to recognise the perception of collusion that this might create.

It was inappropriate for the officer most likely to be under investigation to be the person picking up the investigators from the airport. It was a serious error of judgement for the investigating team, including officers from ethical standards, to be sharing a meal at the home of that officer that evening. If a police officer needs support, it is not the task of investigators to provide this support, but to identify the need and delegate someone else to provide it.

I have referred to various occasions when the investigation was compromised due to these compounding errors of lack of judgment. Senior Sergeant Hurley clearly had the opportunity and did discuss the events under investigation with other witnesses, including Sergeant Leafe and Liaison Officer Bengaroo.[15] Even after the Ethical Standards Officers (Webber and Williams) took over the investigation, they were party to an "off the record" discussion with Senior Sergeant Hurley and Officers Robinson and Kitching about discrepancies in time. [16] But this was not documented as

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[14] E. Johnson, *National Report*, AGPS, Canberra, 1991, vol.1, p.109
[15] T 697 L 30-59
[16] P 11-12

part of the investigation by those officers; it only came to light incidentally through Senior Sergeant Hurley's answers to the CMC officer, Detective Inspector Webster.[17]

The autopsy was conducted by Dr Lampe on 23 November 2004. On Wednesday 24 November 2004, once the autopsy results were known, the Queensland Police Service Commissioner requested the Crime and Misconduct Commission take full charge of the investigation. Detective Inspector Bemi with Lisa Florence from the CMC as well as Inspector Williams travelled to Townsville to conduct investigations as a joint undertaking with the Queensland Police Service.

On Friday 26 November 2004, this investigation team travelled to Palm Island. This was the day when civil unrest erupted on the island. As these officers had witnessed some incidents they were relieved of their responsibilities. On Monday 29 November 2004 Detective Inspector Ken Webster was appointed. He was assisted by Detective Sergeant Britton and Ms Lisa Florence.

It has been abundantly clear that throughout this investigation, it was not until the Crime and Misconduct Commission assumed investigations, (on 24 November 2004) that there was any proper support or assistance provided to indigenous witnesses. Ms Lisa Florence assisted Detective Inspector Webster in talking with people. Her help was invaluable. It was essential to build rapport and make connections to establish sufficient trust for proper investigations and statements to be taken. Without such assistance the results are plainly deficient, leaving both investigators and the witnesses at cross purposes. Even such a witness as Lloyd Bengaroo, who was himself a Police Liaison Officer, was reticent and hesitant in giving his statements. There may of course be other explanations for his reticence, but a support person, independent of both the police and local community might well have elicited more information at an early stage.

Once the CMC took charge of the investigation, I am confident that it proceeded thoroughly, competently and impartially.

The response by senior police officers to this inquest should be cause for some reflection. There was little acknowledgement that the investigation by the police was deficient. Clear directives from the Police Commissioner and a commitment to ensure proper standards of investigation are required to restore public confidence.

<u>Consideration of the evidence of how Mulrunji incurred the fatal injury.</u>

Senior Sergeant Hurley's counsel, Mr Zillman, has conceded that the only officer who had physical dealings with Mulrunji from the time of his arrest was Senior Sergeant Hurley. Sergeant Leafe assisted Senior Sergeant Hurly in dragging Mulrunji down the corridor, through a doorway and then into the cell where he was deposited.

The issues to be resolved if possible are:-

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[17] Ibid

1. Did the injury occur before or in the course of the initial arrest?

This can quickly be discounted. Nothing from the various eye witness accounts of Mulrunji's walk along Dee Street towards the Bramwell house, and on to the point where the police vehicle stopped and he was arrested, indicates that he was suffering from any injury at all, certainly not a life threatening abdominal bleed. Nor do any accounts of the arrest, from any of the witnesses, suggest the injury occurred in the course of the arrest. Mulrunji was still clearly in a physical condition to actively resist Senior Sergeant Hurley and to throw a punch at the Sergeant at the watch house after he was removed from the vehicle. I find that Mulrunji was not suffering from an abdominal, or any other injury, prior to, or in the course of his arrest and transport to the Palm Island Police Station.

2. Did the injury occur while Mulrunji was being removed from the police vehicle or during the struggle to enter the police station?

The evidence is clear that neither Senior Sergeant Hurley nor Mulrunji went to the ground until there was a fall through the rear door of the police station. Even assuming for the moment that Senior Sergeant Hurley did punch Mulrunji as suggested by Alfred Bonner and as stated by Mrs Sibley, the medical evidence rejects that this could have caused the fatal injury.

The consensus of expert medical opinion was that a simple fall through the doorway, even in an uncontrolled and accelerated fashion, was unlikely to have caused the concentrated compressive force sufficient to cause the particular injury to the liver and portal vein. The exception to this would be if, in the course of that fall, Senior Sergeant Hurley fell on top of Mulrunji in such a way that concentrated compressive force was applied to Mulrunji's upper abdomen while he was on the floor. A knee or elbow, with the body's weight behind it, could conceivably have caused the injury that Mulrunji suffered.

3. Did the injury occur after the fall?

Senior Sergeant Hurley's counsel conceded that if the injury occurred after the fall it necessarily inferred a deliberate application of force by Senior Sergeant Hurley.

Senior Sergeant Hurley's explanation

(In this section I use Mulrunji's name where this is what was said in evidence, to be consistent with the record. I do not mean any disrespect in doing so.)

Senior Sergeant Hurley was interviewed by investigating police on three occasions and then by officers of the Crime and Misconduct Commission. He then gave sworn evidence to this inquest upon being directed to do so.

The **first interview** occurred on the same day that Mulrunji died at about four in the afternoon. Detective Senior Sergeant Raymond Kitching, who was the appointed investigating officer, and Detective Robinson, had flown in from Townsville. I have already commented on the inappropriateness of Senior Sergeant Hurley picking up those officers, as well as the inclusion of Officer Robinson as an investigator, and the presence of investigators at Senior Sergeant Hurley's home for a meal. Despite

limited alternatives, proper arrangements should have been made to ensure the integrity of the investigation was not compromised, or threatened by the perception of possible bias.

Senior Sergeant Hurley voluntarily participated in the first interview. He said he had been on Palm Island as Officer in Charge for two years. Concerning that morning, Senior Sergeant Hurley said:-

> "*At nine twenty this morning, I attended the hospital in relation to a complaint of assault- this complaint of assault is an unrelated matter to Mr Doomadgee but- as a result there is three women there who had been assaulted by a male offender. I requested two of those women to attend the police station at a later time to conduct further investigation in relation to their allegations. The third woman was medivacced to the mainland. When these women attended and- I had concluded with them- they asked me to give them a lift home- now the purpose of this was- one of the women had medication for the – disease diabetes that she suffered. This medication was located in the Bramwell residence, Bramwell residence is in Dee Street Palm Island. The offender who had assaulted the three women was a Bramwell so as community assistance we took this- took the first sister to her residence – a Nugent residence in Dee Street- dropped her off- and continued on to the Bramwell residence with Gladys Nugent.*"[18]

Senior Sergeant Hurley went on with information that he was accompanied by Police Liaison Officer Lloyd Bengaroo and what happened at the Bramwell house, culminating in the arrest for public nuisance of young Patrick Bramwell at about quarter past ten in the morning.

Senior Sergeant Hurley then said:-

> "*Whilst we were executing the arrest and placing him in the rear of the police vehicle- Cameron Doomadgee approached us and- he had words with Lloyd (Bengaroo) and the words were similar to the effect of – hey Bengaroo you shouldn't be doing this you're a black fella yourself you shouldn't be locking up black people- Lloyd told Doomadgee to move on- otherwise he'd find himself under arrest. We continued with the arrest of Bramwell. Doomadgee then walked down Dee Street toward Klump Point Road. Dee Street is a horseshoe type street. He was on the southern side of Dee Street. He then mouthed off at us again, calling out abuse. He then continued to walk down stopped again- turned and mouthed off for a second time. By that stage I was just entering the police vehicle. I asked Lloyd who the male was that had mouthed off because I didn't know him and he said it was Cameron Doomadgee. I advised Lloyd that Doomadgee would be going in as well for his behaviour. There was people, you know- there was*

[18] P 3 L 68 and following

> *people's houses where he was. So I drove down to him. I asked him what his problem with the people was. I can't remember whether he replied or what the situation was but I told him he was under arrest and that he was going to the watch house. Now, he struggles a little bit- he didn't just step in the back of the van. I grabbed him by his arm- by the top of his arm near his bicep and then moved him towards the car. Lloyd opened the rear cage door and he resisted you might say to not going in the cage. So then I lifted his legs up and put them on the seat opposite him and closed the cage door.* [19]

Senior Sergeant Hurley went on to describe noticing Mrs Coolburra in the blue house on Dee Street, and then driving away to drop Mrs Gladys Nugent off before proceeding towards the police station. They noticed what appeared to be a fight outside the retail store before arriving at the garage rear entrance to the police station. Hurley saw Sergeant Leafe there. He had apparently come from the incident in the street rather than out from the police station. Hurley said he also noticed a woman he later identified as Penny Sibley, with Sergeant Leafe. Roy Bramwell was also present. He was the person allegedly responsible for assaulting the three Nugent women. Senior Sergeant Hurley continued:-

> "*Now from there what happened was I opened the rear door of the police vehicle to get the two people in custody out. As I did this, Cameron Doomadgee struck me with a closed fist- that was on the back side of his fist – he came across my face. I then took hold of him by grabbing him on the shirt- up close to the ...V of the shirt. A struggle ensued. What I was trying to do at the time was get a hold of – get a hold of one of his arms- but it was a confined area, between the police vehicle and the side wall of the police station- from there we – the struggle moved into the station where we were on the ground- because the step up.*[20]

At this point Detective Sergeant Kitching interrupts and seemingly suggests:-

"So you tripped over a step is that right?"

Hurley responded:-

"*Over the step as we came in – there's a step there."*

Most importantly, Kitching then asks him:-

"How did you manage to fall onto the ground?"

The reply from Senior Sergeant Hurley:-

"I fell to the left of him and he was to the right of me.

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[19] P 4 L 115 and following
[20] P 6 L 172

What caused you to fall?

Just coming into the station I was trying to grab him and he was trying to get away."

Senior Sergeant Hurley then said that Sergeant Leafe had closed the back door of the wagon. He was not sure whether Sergeant Leafe had brought Roy Bramwell into the station or whether he was still outside.

Senior Sergeant Hurley continued:-

> *"Sergeant Leafe then seeing the struggle went and opened up the watch house- the door to the watch house so he didn't have to struggle....and then when there were two of us there- we took him by both arms and we took him into the watch house. There was two mattresses there- he didn't lie on any of the mattresses- he lay on the floor. After that I went out to get Patrick Bramwell out of the car. I got him out of the car without too much incident- although he couldn't walk- he had to be assisted to walk- he was that drunk. Then again, with the step at the back of the watch house- at the back of the station. Patrick Bramwell was that drunk there was that factor of taking by their arms and we ended up dragging Patrick Bramwell through the station and into the watch house. We put him in the cell beside Cameron Doomadgee. He lay to the right of Doomadgee as you face the cell."*[21]

Hurley says he came out from the cell and:-

> *"Probably was Roy Bramwell was seated on the yellow chair that we commonly use in the dayroom for defendants. I don't know when- whether it was before I took him - the first prisoner or after- when he got asked to sit down.* [22]

Bramwell then made a comment about the fact that Cameron Doomadgee punched him when he was getting him out of the car:-

> *"I got the tapes out- the video tapes- rewound the video for the nineteenth of the month when you've got videos set up and pressed record. From there entered the details into the custody register and Michael Leafe commenced a Prisoner inspection Sheet in the register- in the Prisoner inspection Register. I did the first check- I actually did a physical check- where I opened up the cell and walked in – and the reason I did that was because there were two prisoners there- with one normally you can crouch down beside the cell and hear them breathing whatever- with two I actually walked in. They were laying down there- both asleep and both were snoring. I came out and I filled in the Register."*

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[21] P 6 L 205
[22] P 7 L 221

> *The second check was then made by Sergeant Leafe I was in my office. He came back from making that check and advised me that there was a problem with Cameron Doomadgee- he didn't appear to be breathing and he couldn't find a pulse. So I went in and checked for signs for vital signs and I couldn't see whether he was breathing- I put my hand in front of his nose and I couldn't feel any air emitting from him. I checked for a pulse and then I later on- I got a torch and checked his eyes and back – sorry- before I got the torch I came out and got on to VKR to get the ambulance here an emergency. The ambulance was another job- there's only one ambulance here. They came as soon as they could. They put- I don't know the proper term- the patches on his chest ready for defibrillation and then when they checked his vital for his vital signs, the ambulance officer who I only know as Matt said that it wasn't worth while trying to revive him because he was deceased. That's when I had one of the constables who was off duty in the station at the time, go and print up the OPM's for a death in custody. I followed those and I contacted the Comco being Steve Jenkins today. They all contacted Inspector Walmsley and Inspector Webber. I locked off the scene as a crime scene. I left the video running for the time and the only people that went into the scene after that was Matt went in- the ambulance officer went in with Dr Ken. The doctor confirmed that Cameron Doomadgee was deceased."*[23]

Senior Sergeant Hurley stated that the initial arrest of Bramwell was about quarter past ten that morning. He said Cameron Doomadgee was arrested about twenty past ten. The custody register was written at ten twenty six and Hurley says his first inspection of the prisoners in the cell was just before eleven. He said Sergeant Leafe found Mulrunji unresponsive at about twenty past eleven.

At this first interview Hurley was asked about any injury to Mulrunji. He said he did not remember any injuries when he first saw Mulrunji, but noticed a small amount of blood coming from a very small injury above his right eye when he eventually placed him in the cell. He said he did not know how this injury was received. He went on to describe the inside of the police station from the entry via the garage. It was about three to four metres from there through to a step down to the right to the watch house area- a total distance of about ten to twelve metres over which the two police officers dragged Mulrunji to the cell.

Hurley explained that Mulrunji had appeared to be affected by liquor and that he was offensive to Lloyd because Lloyd had told him this. He confirmed that he had no previous dealings with Mulrunji on Palm Island and that he had not been charged on Palm Island.

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[23] P 7 L 225

Hurley told Kitching that Mulrunji just lay on the ground when he and Leafe got him into the watch house. Hurley described it as ready to go to sleep, but:-

"... he wouldn't get up when we asked him to get up to go into his, to go to the watch house- that's why we had to drag him in."

Mulrunji was not speaking to Hurley at that stage.

Inspector Kitching asked him a second time:-

"And you didn't land on top of him?"[24]

To which Hurley replied:-

"No, I landed beside him on the lino."

Hurley's explanation concerning checks on Mulrunji's medical background was:-

"I wasn't able to ask him the questions because of his aggression and because of the fact we took him straight to the cell and then when I went to the cell and we checked him the first time and they were asleep."[25]

Concerning the cell monitor system Senior Sergeant Hurley said the tape would be rewound and placed on to record and the two monitors turned on (which would give vision into the cell.)

Senior Sergeant Hurley also told Detective Kitching that Mulrunji's family had come up to the police station when he was in the cell and were told to "*... see us later on.*"

The next day, on 20 November 2004, Senior Sergeant Hurley was interviewed for **the second time** by Detective Inspectors Webber and Williams, the police investigators from the Ethical Standards section from Townsville. It is noteworthy that they had already obtained a video re-enactment from Roy Bramwell before interviewing Senior Sergeant Hurley. No direction was required by Senior Sergeant Hurley to answer questions.

The interview was set up as a re-enactment and was recorded on video. Senior Sergeant Hurley showed those officers that on arrival back at the station the rear door was initially shut. Sergeant Leafe was there with a person he identified to Senior Sergeant Hurley as Roy Bramwell. He was under investigation for the assaults of the three Nugent women. There was also a lady identified by Lloyd Bengaroo to Senior Sergeant Hurley as Penny Sibley. Hurley told Leafe to put Roy Bramwell inside on the yellow chair. He then opened the rear door of the vehicle. Senior Sergeant Hurley said Doomadgee stepped out and assaulted him with a backhand closed fist, striking him on the right jaw chin area. There was a tussle and Hurley says he went straight for his shirt to pull him towards him to stop that happening. Senior Sergeant Hurley explained that due to intoxication Mulrunji was lower than his usual position. Each had hold of the other as Hurley tried to heave him towards the door. Senior Sergeant

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[24] P 11 L 417
[25] P 11 L427-429

Hurley says he remembers bouncing off the wall a couple of times. Bengaroo had opened the door. In the video he demonstrated with Detective Inspector Webber how they went through the door indicating they ended up on the floor. Hurley recalled *"... making sure (his head) didn't hit there."* [26]

Hurley says he stood up but can't remember whether Mulrunji was on his stomach or on his back when he fell. He demonstrated trying to lift him up by the shirt with the shirt in his hand as he was bending over him on the floor. He said this was on a couple of occasions- saying *"Get up Mr Doomadgee, get up."* [27]

Hurley says Doomadgee refused to get up. Interestingly, in this second interview Hurley said he:-

"... just asked Michael (Sergeant Leafe) before, when did he, (Leafe) come through?"

Obviously, despite the arrival and commencement of investigating police officers from Townsville, it was possible for Senior Sergeant Hurley to discuss such a matter with Sergeant Leafe before his second interview and re-enactment. He clearly felt quite open in referring to this with the investigating officers. This conversation with Sergeant Leafe should not have been possible and it was the investigating officer's responsibility to make sure such a discussion did not happen. They clearly did not do so.

Senior Sergeant Hurley went on to state that Sergeant Leafe had told him that he had come through, past Hurley and Mulrunji, opened the wooden door and then the door into the watch house and come back. Hurley says by this stage Doomadgee was on his back and Hurley stepped over him. Leafe was on the other hand and both have dragged him by his wrists with his legs dragging. This was along a passage, through an open door into the area immediately outside the open cell number two. Hurley says Mulrunji *"just laid there then."* [28]

Detective Inspector Webber asked:-

"... when you had Mr Doomadgee on the ground you said you were trying to pick him up, did you pick him by the shirt?[29]

Hurley responded:-

"I picked him up like to a certain... but his shirt kept ripping I picked him up a couple of times."[30]

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[26] P 4 L 80
[27] P 4 L 95-96
[28] P 4 L 104
[29] P 4 L 114
[30] P 4 L 117

Detective Webber asked Senior Sergeant Hurley to demonstrate again, showing the movement he made as he tried to pick him up by the shirt. He showed the motion as if the shirt ripped as he held it to hold the weight of the man on the floor.

Senior Sergeant Hurley said Sergeant Leafe then returned and helped him drag Mulrunji to the cells, with Hurley holding the left arm and Leafe the right. He denied that Mulrunji's head would have struck the ground at any time during this transfer, although he said that after he was deceased, that he noticed that Mulrunji had a "*... spot of blood there so it is a possibility that his head has hit the ground.*"[31]

Detective Inspector Webber again clarified the circumstances of initially entering the police station. He said:-

"You more or less said you tripped as you come through the door."[32]

Hurley responded:-

"Because of the fact that, well most likely because of the fact two of us trying to get through the door and, I ended up on my knees beside him and he was here."[33]

Webber elicited from Senior Sergeant Hurley that the fall happened when Mulrunji was already down low, which was explained as due to Mulrunji's intoxication and resistance to Hurley.

Again, this part of the interview highlights that Senior Sergeant Hurley had the opportunity to, and did in fact discuss the matter with other witnesses prior to the interview. When Detective Inspector Webber asked:-

"When you were on the ground who could you see around at that point?[34]

Hurley said:-

> *"Nobody to tell you the truth, Oh I didn't- only from hindsight and from speaking to the people found out that Lloyd was the one that opened the door and Bramwell was over there. But I was aware I told Michael (Leafe) to bring Bramwell in, but I couldn't see Bramwell. I didn't know whether he was there or not. I knew Michael was there and I knew Penny Sibley was out there and Lloyd was around the area somewhere. I didn't like try and mentally picture it I did see them you know. I was more concerned about what you know having the tussle with Doomadgee."*[35]

Senior Sergeant Hurley said:-

"... the thing that surprised me is I when he hit me out the back of the van, I said, "he hit me, he punched me." Because that's not normal here, you know and it shocked me

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[31] P 6 L 186
[32] P 6 L 190
[33] P 6 L 192-193
[34] P 6 L 203
[35] P 6 L 205-212

basically. So yeah, that's when I grabbed him and I knew there'd be a tussle to get him inside if he is going to hit a copper."

Inspector Williams asked how Mulrunji was laying on the ground. Senior Sergeant Hurley said Mulrunji was initially lying on his *right* side and then onto his back. Hurley said he was still conscious, although he said that when he was dragged to the cells he wasn't particularly talking. Hurley said he was moving his legs but seemed resigned to going in there. He wasn't trying to stand. Hurley said he refused to stand and so he and Leafe dragged him.

A little later, at 1.10pm that afternoon, Senior Sergeant Hurley is again spoken to, this time by Detective Senior Sergeant Kitching and Detective Inspector Williams.

Senior Sergeant Hurley said Sergeant Leafe had completed the register. The entry was:-

"19/11/04, 10.28pm Got two male prisoners which now includes Patrick Doomadgee and Patrick Nugent."

Hurley corrected this statement and said "Cameron Doomadgee."

The next entry was 19/11 at 10.55pm.
"Two prisoners cell checked snoring." Initialled by Officer Hurley.

Senior Sergeant Hurley explained that he had entered the cell (because there were two people in it,) stood over the top of them, watched that they were both breathing and watching their stomachs rise up and down. They both appeared to be asleep and they were snoring.

The next entry was at 11.23am and was made by Sergeant Leafe. He recorded – two male prisoners physical check. *"Doomadgee cool. No pulse. Advised OC, contacted the Comms QAS, Nugent asleep."*

I note at this time that Patrick Bramwell seems to have also been called by the surname Nugent.

Senior Sergeant Hurley said that this entry was made by Sergeant Leafe, who came and told Hurley that there was no pulse and that Doomadgee was unusually cool. Senior Sergeant Hurley went in himself and checked. He said he felt for a pulse. When first interviewed by Senior Sergeant Kitching, he said he tried at the wrist and carotid artery under the jaw. He tried to get a response by talking to him and tapping him. He came out to check on the ambulance and to tell them this was urgent. Senior Sergeant Hurley said he thought that the prisoner was deceased but would get the ambulance to try to revive him. He shone a torch in his eyes to check for a reaction and put his hand close to his mouth to check for exhalation. He told the investigators that initially he thought he felt a pulse, but in hindsight he dismissed this as feeling the rush of his own adrenalin in reaction to the situation.

Hurley said he did not attempt resuscitation because he believed the man was deceased. I remark that this is perplexing given his previous answer that he had thought he felt a weak pulse. There was however another check made by the young officer Constable Steadman who suggested shining a light into Mulrunji's eyes to check if there was any response. There was none.

The ambulance officer arrived and upon examination confirmed that Mulrunji was in fact deceased. The evidence from Sergeant Leafe that Mulrunji felt cold would also suggest that he was in fact deceased when last checked by that officer.

Senior Sergeant Hurley says he remembers the ambulance officers ripped Mulrunji's shirt open to apply defibrillator pads.

I also note the statement of scenes of crime officers locating brown buttons to the shirt in the cell. The video tape of what happened in the cell does record the ambulance officers ripping open the front of Mulrunji's shirt. Buttons popped off and were later photographed in the cell. Photographs numbered 31, 32 and 33 taken by Senior Constable Tibbey showed the rips in the back of the shirt in the right shoulder blade area and extending through the back of the right short sleeved shirt to its edge. Those tears do not appear to have been caused by the ambulance officers when they pulled the front of the shirt open as Mulrunji lay on his back in the cell. The tears in the back of the shirt are consistent with Senior Sergeant Hurley's account that they occurred in the struggle before entering the station and/or while Mulrunji was on the floor inside the station.

Senior Sergeant Hurley stated that he had completed the most recent semester of first aid, but he had not done the practical side of it, only the theory. He had tried to organise training via the local ambulance officer but the session did not eventuate. No attempt at resuscitation of Mulrunji was made.

The watch house register was completed by Senior Sergeant Hurley. He said the ambulance took 5- 8 minutes to arrive. He had used the quickest method of radioing via police communications which then had access to the ambulance by radio.

Senior Sergeant Hurley said to the officers questioning him that he felt sick in the guts when it was realised that Mulrunji was deceased.

The fourth interview of Senior Sergeant Hurley was conducted by Detective Inspector Webster and Detective Sergeant Britton from the Crime and Misconduct Commission. It occurred on 8 December 2004 in Townsville with legal representation for the police officer. The interview commenced with a direction pursuant to Section 4.9 of the *Police Service Administration Act 1990* which required him to answer all questions posed to him. This was the first occasion when Hurley had required the direction.

Senior Sergeant Hurley denied punching Mulrunji in the hip or below the rib area as alleged by Penny Sibley. He denied the suggestion of a punch as stated by Mr Alfred Bonner. He denied any retaliation towards Mulrunji.

He said Bengaroo was outside the police station, but this was only after later discussing it with Bengaroo.

Detective Inspector Webster asked Hurley to give an indication of how Hurley fell to the floor- did he fall separately or together, with Doomadgee? What type of fall was it?

Hurley said:-

> *"I had hold of Doomadgee and we both came through over the step and through the door at the same time and **I recall I fell to the left and he was to the right, but I had hold of him the whole way down until we hit the floor and um, his, uh, the one thing that I recall was uh, his head went close to hitting a filing cabinet and the door frame but I noted that it didn't; that was a relief at the time."***[36]

Senior Sergeant Hurley confirmed Mulrunji had been struggling and resisting efforts to get him into the police station.

That interview continued later that same afternoon for about half an hour.

There was confirmation that there had been a struggle to enter the police station and there was some contact with the amplimesh grill protecting the police station window. The two men were struggling as they went to the ground through the door.

Detective Inspector Webster asked at what point did Mulrunji cease to resist Hurley's efforts to get him into the watch house. [37]

Hurley explained that as Mulrunji was lying there on the floor of the police station he thought he was playing the fool, which happened quite a lot, then:-

"... you've got to drag 'em or carry them into the watch house."[38]

The inference is that it was after the fall that Mulrunji stopped resisting.

He could not explain what caused them to fall. Senior Sergeant Hurley said he could not remember words, but that Mulrunji was protesting being taken into the police station. He did not recall Mulrunji saying anything after the fall. Hurley told Inspector Webster that Mulrunji said nothing in the cells.

Senior Sergeant Hurley said he did not hear him say anything after he had activated the tapes from the cells.

When questioned about any change in Mulrunji's behaviour, Hurley explained that he thought he was playing the fool and he wasn't getting up. This was after they had both fallen to the floor.

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[36] P 22 L 941
[37] P 3 L 35
[38] P 3 L 40

He denied saying the words "... *you want more Mr Doomadgee, you want more?"* when Mulrunji was on the police station floor near the entrance of the police station.

He could not recall Mulrunji using the word *"Queenie"* to him.

It was suggested to Hurley that Roy Bramwell had seen him move his arm three times downward to Mulrunji as he lay on the floor in a punching motion. Hurley's response was:-

"The only possible explanation I can say for that, I did not punch Doomadgee, I was trying to raise Doomadgee off the floor using his shirt again but the shirt kept ripping."[39]

Inspector Webster summarised Roy Bramwell's allegations which were made on 20 November in the re-enactment video interview. It was alleged Senior Sergeant Hurley punched Doomadgee three times in the face and that he also kicked Mr Doomadgee.

Senior Sergeant Hurley said this was totally incorrect- "... *a false allegation*." [40]

The allegation put to him from Mr Bramwell also included that Mulrunji had started kicking when he was on the floor and said "... *let me go- I get up and walk."*

Hurley agreed with Bramwell that Mulrunji had been dragged through to the watch house, but denied saying – "*want more Mr Doomadgee?"* He denied punching him at all. Senior Sergeant Hurley denied that he had kicked Mulrunji. He agreed that Mulrunji was dragged to the cells. He said Bramwell's allegations were totally false. He denied that Mulrunji went onto his side trying to double up.

The motions of Senior Sergeant Hurley's elbow coming up three times was sought to be explained by Hurley as him trying to lift Mulrunji up by his shirt and the shirt ripping.

Senior Sergeant Hurley says he recalls hearing the shirt tearing for the first time at the back of the station before entering and then for the second time when he was trying to lift him up off the ground in the station. [41]

It was put to Hurley that Roy Bramwell had said:-

"*All I can see is Chris elbow going up and down and "You want more Mr Doomadgee, you want more? Have you had enough Mr Doomadgee?*[42]

Senior Sergeant Hurley said:-

"*I never um assaulted Cameron Doomadgee by punching him um, not once, not twice, not three times."* [43]

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[39] P 4 L 123-124
[40] P 5 L 145
[41] P 7 L 233-235
[42] P 7 L 238
[43] P 7 L 259

Hurley said that both Patrick Bramwell and the deceased were put in cell 2 on the right hand side because the buzzer in cell 1 was not working due to water damage.

Patrick Bramwell had told police that he was in a separate cell to Mulrunji and that that he had seen and heard Mulrunji being taken from his cell and assaulted by Senior Sergeant Hurley. He said Hurley had punched Mulrunji in the ribs. The allegation is dismissed as there is a video record of the two men in cell number two together. Patrick is clearly asleep and laying down on Mulrunji's right hand side throughout the recording. When Mulrunji calls out for help and is writhing in pain, Patrick can be seen offering some comfort as he pats Mulrunji.

The specific question was put to Senior Sergeant Hurley whether he punched Doomadgee in the ribs whilst at the watch house. Hurley said *"No, I did not."*[44]

Finally Inspector Webster put a slightly different version of events given by Roy Bramwell to his solicitor Mr Shepherd. I do not agree with Inspector Webster's interpretation that this suggests a different version with Mulrunji standing in the police station, being punched by Senior Sergeant Hurley. I would interpret it as essentially the same account as stated to the police by Roy Bramwell. The most significant difference is that Mr Bramwell does not initially state there was a fall into the station, rather that Mulrunji was dragged in by both police officers Leafe and Hurley.

Senior Sergeant Hurley denies it.

<u>Senior Sergeant Hurley's evidence at the inquest.</u>

A direction was necessary to obtain Senior Sergeant Hurley's evidence on the basis that the answers may incriminate him. The public interest in the death in custody of an indigenous man on Palm Island was sufficient to require his answers. According to law those answers are not admissible against Senior Sergeant Hurley in any other proceedings except for the offence of perjury.

Senior Sergeant Hurley was asked if you could hear a prisoner in the cells calling out if you were in the station. He said you could, but that he did not hear Mulrunji call out from the cells that day. I have listened to the sounds from the videotape from the cell that day. The sound quality is not good, and it has not been established whether the sound from the video was turned down or off, on the monitor that day. There was evidence that people heard calling out from the cells from outside the police station.

I have no doubt that one particular cry out for help by Mulrunji must have been heard in the police station. Indeed this is consistent with a brief visit to the cells a short time later.

Senior Sergeant Hurley agreed that Detective Webber and Robinson came to Palm Island from Townsville the day Mulrunji died. They had dinner at his place that evening, although he told the court he had forgotten this until reminded.

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[44] P 8 L 310

On the crucial issue of his explanation of how Mulrunji suffered the fatal injury, Senior Sergeant Hurley said:-

> *"If I didn't know the medical evidence, I'd tell you that I fell to the left of him. The medical evidence would suggest that that wasn't the case".* [45]
>
> *"Q: Well, the medical evidence that you've been made aware of suggests that very significant force has been applied to Mulrunji. Is that correct?*
>
> *A: Correct.*
>
> *Q: Resulting in a very significant injury. Is that so?*
>
> *A: Correct.*
>
> *Q: And the very best of your recollection is, that when you fell through the door, you did not land on top of him. Is that so?*
>
> *A: I believed I landed to the left of him.*
>
> *Q: Ok?*
>
> *A: The fall from outside the police station, to the point of being on the – on the floor happened in a – happened in a moment. And it was – it was hard and it was fast to the floor."* [46]

I remark however, that according to the evidence of Sergeant Leafe, Senior Sergeant Hurley told Leafe within hours of the incident that he had fallen <u>next</u> to Mulrunji. Senior Sergeant Hurley maintained that account to each investigating police officer and officers from the CMC until he gave evidence in court.

<u>Other incidents involving Senior Sergeant Hurley</u>

Evidence was given in the inquest of several allegations against Senior Sergeant Hurley unconnected with Mulrunji's death, which might be of assistance as "propensity evidence" in determining factual findings. I will not refer to each of them. I do not make any findings regarding these other allegations against Senior Sergeant Hurley. I consider these matters simply as background in considering what occurred on 19 November2004 and, as relevant information on how policing was undertaken on Palm Island prior to Mulrunji's death.

<u>Noel Cannon</u>

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[45] T 606 L 10
[46] T 606 L 15-30

There was an allegation against Senior Sergeant Hurley well prior to the events of November 2004 raised by Noel Cannon. It was a similar situation to the one faced by Mulrunji when he was arrested and brought to the cells. Noel Cannon gave evidence he was in placed in the cells of the Palm Island Police Station after being arrested by Senior Sergeant Hurley. After repeated requests for a mattress, it is alleged that Senior Sergeant Hurley entered the cell, grabbed Cannon by the throat and squeezed his throat causing him to wet himself. Mr Cannon said that Senior Sergeant Hurley also "*kneed him in the guts*".

Cross-examination showed various inconsistencies in his version. The evidence also strongly suggested that Mr Cannon was, at the relevant time, affected by liquor and marijuana. However, Mr Cannon firmly maintained his allegations of assault against Senior Sergeant Hurley. He seemed more concerned about the squeezing of the throat than the alleged kneeing. The Senior Sergeant was adamant in his denials that he had unlawfully assaulted Noel Cannon.

I have regard to this previous allegation. I do not make any findings with respect to it.

Barbara Pilot

This complaint was not from a person in custody. I do not consider it as directly relevant to issues about being brought into custody, but it does raise matters pertinent to this inquest.

Barbara Pilot's allegation was of a very serious nature. She said that Senior Sergeant Hurley caused considerable injury to her when the police car he was driving ran over her foot. The police were attending in response to a report of domestic violence and in the course of that attendance a person was arrested and placed in the rear of the police van. Barbara Pilot then approached the police vehicle.

The precise complaint was raised by Barbara Pilot immediately at the scene and directly to the officer driving the vehicle. The injury was prima facie consistent with being run over by a car tyre. The complaint was maintained to the doctor at the hospital where she was first treated before she was transferred to Townsville. Senior Sergeant Hurley did report the allegation immediately to his superiors in Townsville, but from there the investigation went awry.

Whether or not the incident occurred as was alleged, and whether it occurred due to accident, negligence or was deliberate, remains undetermined. It most certainly required independent and full investigation. This did not happen. A cursory and completely unsatisfactory investigation was belatedly undertaken by Detective Robinson, who dismissed the complaint as fictitious.

What is noteworthy for the purposes of this inquest is that Senior Sergeant Hurley himself went back to the scene and approached possible witnesses that night to see what they had seen. Christine Murray and Margaret Murray's responses were predictable. They did not tell Senior Sergeant Hurley what they had seen. They were however, willing to answer questions at a later time when asked by an independent officer from the Crime and Misconduct Commission.

The other matter of relevance to this inquest is the manner and extent to which Senior Sergeant Hurley told this inquest he satisfied himself that Barbara Pilot was uninjured. He opened the car door and looked her up and down as she lay on the ground, decided she was unhurt, and drove off.

His actions in discharging his obligation to check the welfare of Mulrunji and Patrick Bramwell in the cells was just as callous and deficient.

The final matter of significance revealed from the Barbara Pilot allegations was that Senior Sergeant Hurley arrested Arthur Murray, charged him at the police station and placed him in the cells. He then left the police station to go to the hospital to make further inquiries. On my understanding of the evidence, Arthur Murray was left in the cell in an intoxicated state without anyone being available at the station to supervise his safety in the cell. It seemed merely to be a matter of the reality of policing on Palm Island, without adequate resources or other alternatives to assure the safety of prisoners. It did not even seem to be a matter of concern.

Findings pursuant to Section 45 *Coroners Act 2003*

Proceedings in a coroner's court are not as constrained as courts exercising criminal or civil jurisdiction because s37 of the Act provides that "*(T)he Coroners Court is not bound by the rules of evidence, but may inform itself in any way it considers appropriate.*"

This flexibility has been explained as a consequence of an inquest being a fact-finding exercise rather than a means of apportioning guilt: an inquiry rather than a trial.[47]

A coroner should apply the civil standard of proof, namely the balance of probabilities, but the approach referred to as the *Briginshaw* sliding scale is applicable.[48] This means that the more significant the issue to be determined, the more serious an allegation or the more inherently unlikely an occurrence, the clearer and more persuasive the evidence needed for the trier of fact to be sufficiently satisfied that it has been proven to the civil standard.[49]

It is also clear that a coroner is obliged to comply with the rules of natural justice and to act judicially.[50]This means that no findings adverse to the interest of any party may be made without that party first being given a right to be heard in opposition to that finding. As *Annetts v McCann*[51] makes clear, that includes being given an opportunity to make submissions against findings that might be damaging to the reputation of any individual or organisation.

Conclusions from the evidence

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[47] *R v South London Coroner; ex parte Thompson* per Lord Lane CJ, (1982) 126 S.J. 625
[48] *Anderson v Blashki* [1993] 2 VR 89 at 96 per Gobbo J
[49] Briginshaw v Briginshaw (1938) 60 CLR 336 at 361 per Sir Owen Dixon J
[50] *Harmsworth v State Coroner* [1989] VR 989 at 994 and see a useful discussion of the issue in Freckelton I., "Inquest Law" in *The inquest handbook*, Selby H., Federation Press, 1998 at 13
[51] (1990) 65 ALJR 167 at 168

a) The Deceased is Cameron Francis Doomadgee, known by his tribal name Mulrunji.

b) The Deceased died from intra-abdominal haemorrhage due to, or as a consequence of, the rupture of his liver and portal vein. He had also sustained four broken ribs.

c) The Deceased died at approximately 11.00a.m. on 19 November 2004.

d) The Deceased died in the police watch house on Palm Island, Queensland.

I find that Mulrunji did punch Senior Sergeant Hurley outside the police station as he tried to resist being taken into the police station. I accept the evidence of Mrs Sibley, which was supported to an extent by Alfred Bonner. Senior Sergeant Hurley did respond to Mulrunji's punch by himself punching Mulrunji. I am satisfied that this was somewhere to the body area rather than to the head and occurred as the two men struggled outside the station. I reject Senior Sergeant Hurley's denial as untruthful.

I find that both men fell through the entrance door of the police station. There was a concrete step before the door. The floor was concrete and covered with lino. The men had hold of each other before the fall.

I have considered carefully whether or not Senior Sergeant Hurley fell onto Mulrunji at this time. Senior Sergeant Hurley told Sergeant Leafe he had not. He repeated this version to every investigating police officer and the investigating officer from the Crime and Misconduct Commission. He told all of them that he had fallen to his left hand side, with Mulrunji to the right hand side.

I am not persuaded by Dr Lampe's opinion that people are not able to recall exactly what happened in complex events. Senior Sergeant Hurley was quite clear on every occasion, until he came to court, that he had not fallen on Mulrunji. Indeed it would seem commonplace that anyone would be able to say whether they had got up from a fall, either removing themselves from on top of another person, or up from a hard, flat, lino covered concrete surface.

In his evidence to this court Senior Sergeant Hurley merely said he must have fallen on Mulrunji. What has brought this change of recollection after repeated adamant accounts that he fell to the left hand side? The reality is that Senior Sergeant Hurley has become aware exactly of the nature of Mulrunji's injuries causing death. If he had not otherwise caused such injury to Mulrunji, then the injury must be explained in the fall.

In considering the plausibility of this belated recollection and reinterpretation of what must have happened, I consider the following.

Senior Sergeant Hurley still asserted that he was not put out by the fall and did not react against Mulrunji- a most unlikely response from a man who considered his lawful authority and personal position of power was being challenged, and in his own police station. Constable Steadman heard Senior Sergeant Hurley yelling in an abusive tone to Mulrunji immediately after they had fallen through the door.

From his position outside the door, Steadman then saw Mulrunji's feet being dragged along towards the cells.[52] He could only see feet. He saw no more and waited for things to "settle down" before entering the police station.

I find that Roy Bramwell was quite excited in giving his account at the re-enactment and there is some embellishment, but the basis of what he saw is credible given the overall sequence of events and the injury sustained. Despite a steady demeanour in court, Senior Sergeant Hurley's explanation does not persuade me he was truthful in his account of what happened.

I note Senior Sergeant Hurley's response to Roy Bramwell's allegation of three punches. Roy Bramwell could only see Senior Sergeant Hurley's elbow going up and down three times from where he was seated in the yellow chair. The photos, (photo 10) of this view show it was partly obstructed by the filing cabinet. But Senior Sergeant Hurley is a very large man. In the re-enactment tape he dwarfs even the tall Inspector Williams and makes Inspector Webber look very small. His head nearly touches the doorframe. He is 200.66 centimetres tall. Roy Bramwwell said he could only see Mulrunji's feet and part of his legs as he lay on the floor. Senior Sergeant Hurley's evidence was that he did not see that Roy Bramwell was sitting in the yellow chair when he and Mulrunji fell through the doorway. Mr Bramwell said Senior Sergeant Hurley was bending over Mulrunji with his elbow going up and down three times. He couldn't see where Senior Sergeant Hurley's hand was, relative to Mulrunji's body. He was led into the suggestion by police that Mulrunji was being hit in the head. He also referred at this time to Mulrunji's shirt being ripped. And, most significantly he said these actions were accompanied by Senior Sergeant Hurley saying *"Do you want more Mr Doomadgee, do you want more?"*[53]

Senior Sergeant Hurley's response was to deny the accusation of punching and to explain it as an attempt to lift Mulrunji by the shirt. The shirt kept ripping, thus causing him to perform a repetitive action which he says was misinterpreted by Roy Bramwell as punching. Both men have described in physical terms the action of the elbow going up and down. The description is reminiscent of what is frequently seen in football matches when hot headed players seemingly grab at shirtfronts, but take the opportunity to punch the opposition in doing so.

Contrary to his evidence I find that Senior Sergeant Hurley was angry when he was hit in the jaw by Mulrunji as he came out of the back of the police van. He expressed it himself that he was shocked at the challenge to his authority on Palm Island.

I reject Senior Sergeant Hurley's account that he then simply got up from the heavy fall through the doorway and went to assist the man who had just punched him and caused him to fall over. I find that he did respond with physical force against Mulrunji while Murunji was still on the floor.

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[52] P 9 L338
[53] P 8 L 261

I accept Roy Bramwell's evidence to the extent that he saw Senior Sergeant Hurley leaning over Mulrunji with his elbow going up and down three times. In particular I note that Roy Bramwell's account to the police recorded on the re-enactment video occurred prior to the release of the autopsy information, whereas Senior Sergeant Hurley's changed recollection and reconstruction of where he had fallen, occurred after he knew exactly what injury had caused Mulrunji's death.

Senior Sergeant Hurley's evidence was that he considered Mulrunji was still causing him a problem by not getting up. He was asked to respond to what Roy Bramwell had told police. Senior Sergeant Hurley explained that he was lifting Mulrunji and, as he did so, the shirt was ripping. There is evidence that indeed the shirt was ripped, but I am not satisfied with Senior Sergeant Hurley's account of how this occurred. Critically, there is what Roy Bramwell alleges he heard Senior Sergeant Hurley say- *"Do you want more, Mr Doomadgee. Do you want more?"* I accept that Senior Sergeant Hurley did say this.

I am satisfied that on the basis of Roy Bramwell's account of what he saw and heard, together with the immediately preceding sequence of events, that Senior Sergeant Hurley lost his temper and hit Mulrunji after falling to the floor.

I find that Senior Sergeant Hurley's repeated clear statements that he fell to the left hand side of Mulrunji are in fact what occurred.

I find that Senior Sergeant Hurley hit Mulrunji whilst he was on the floor a number of times in a direct response to himself having been hit in the jaw and then falling to the floor.

I do not necessarily conclude that this force was to Mulrunji's head as stated by Mr Bramwell. He could not have been in a position to see Mulrunji's head from where he was seated. Mulrunji's feet and part of his legs was all he could see. It is open on Bramwell's evidence that the force was applied to Mulrunji's body rather then his head. This is also consistent with the medical evidence of the injuries that caused Mulrunji's death. It is also most likely that it was at this time that Mulrunji suffered the injury to his right eye.

After this occurred, I find there was no further resistance or indeed any speech or response from Mulrunji. I conclude that these actions of Senior Sergeant Hurley caused the fatal injuries.

Sergeant Leafe returned from opening the cells and Mulrunji was dragged away and deposited in cell number two. Patrick Bramwell was then similarly brought in and dragged to the cells.

There was no attempt whatsoever to check on Mulrunji's state of health after the fall and its sequelae. The so called checks on the two intoxicated prisoners in the cells was woeful, even excluding the possibility of serious injury having occurred. Neither officer remained in the cell for more than seconds on each occasion they entered to check the prisoner. It was not until Sergeant Leafe suspected that Murunji might in fact be dead, that any close scrutiny was made. No attempt at resuscitation was made by any police officer even when there was a degree of uncertainty about whether Mulrunji had died.

I find, in reliance on all the medical evidence and the video tape that Mulrunji was indeed deceased when Sergeant Leafe checked on him at the time recorded by the tape as twenty past eleven that morning.

I find that Senior Sergeant Hurley avoided the issue and sent family members away from the station after knowing that Mulrunji was deceased.

Comments pursuant to Section 46 *Coroners Act 2003*

A coroner may comment on anything connected with the death relating to public health or safety, or the administration of justice, or ways to prevent deaths from happening in similar circumstances. In doing so a coroner must not include any statement that a person is guilty of an offence or civilly liable for something.

I have been greatly assisted in this by all counsel, particularly Mr Plunkett, Mr Callaghan SC, Mr Boe, and Mr Hunyor. Mr Boe has provided extensive background material on Palm Island and Mr Hunyor has detailed comments for consideration.

I note the Police Commissioner's request via his counsel that they be permitted to make any further response on any proposed comments before these are made. Ample opportunity has already been provided when all parties were invited to make written submissions and an opportunity for reply was also given. I further note that the Police Commissioner's legal representative was the only representative who chose not to avail himself of the opportunity to make final verbal closing submissions in court. It was an opportunity missed to address the family's concerns from this State's police service. In these circumstances I decline to give any further opportunity or create any further delay to permit the police to respond further on matters of general "comment."

The starting point for consideration of any comments must be by reference to recommendations of the Royal Commission into Aboriginal Deaths in Custody.

It is reprehensible that the detailed recommendations of the Royal Commission into Aboriginal Deaths in Custody should have to be referred to, so many years after the Royal Commission. The evidence is clear however that these recommendations are still apt and still ignored.

I have considered the detailed written submissions from the Human Rights and Equal Opportunity Commission, which have been endorsed and adopted by many of the other parties before the inquest.

I am satisfied that each of the areas identified by Mr Hunyor is an issue connected to Mulrunji's death. I am satisfied that the police actions and the exercise of their power in response to public drunkenness on Palm Island are appropriate matters for comment.

I adopt each of the forty submitted comments, with minor amendment, which are stated as follows:

ARREST AND POLICING

1. The arrest of Mulrunji was not an appropriate exercise of police discretion. There were a range of alternatives to arrest available that should have been preferred. These include giving a caution, issuing a direction or commencing proceedings by way of notice to appear or summons.

2. The *Police Powers and Responsibilities Act 2000* (PPR Act) should be amended to reflect the principle of arrest as a last resort. This might be achieved by amending s 198 to provide that a police officer may only arrest an adult without warrant where the officer reasonably suspects that he or she has committed an offence and where they reasonably believe that no other action, in all the circumstances, is appropriate given the matters set out in s 198.

3. The PPR Act should be amended to include an explicit statutory duty to consider and utilise alternatives to the detention of intoxicated persons in police cells.

4. The Operational Procedures Manual (OPM) should be amended to instruct officers to consider arrest as a last resort and consider all alternatives before arresting a person, particularly in cases of minor offences.

5. The OPM should be amended to reinforce the need to consider and utilise alternatives to the detention of intoxicated persons in police cells.

6. The inappropriate arrest of Mulrunji reflects a lack of awareness of the legal bases upon which a person may be arrested without a warrant. The Police Commissioner should consider whether this reflects upon police training generally or a need for further training of Senior Sergeant Hurley or other officers who gave evidence at this inquest.

7. The decision to arrest Mulrunji also reflects a lack of awareness of the alternatives to arrest and confusion about their availability in the case of intoxicated persons. The Police Commissioner should consider whether this reflects upon police training generally or a need for further training of Senior Sergeant Hurley and other officers who gave evidence at this inquest.

8. The decision to arrest Mulrunji and the evidence of Senior Sergeant Hurley discloses a lack of awareness of, and a failure to take into account, the recommendations of the RCIADIC relating to the arrest of Aboriginal people for drunkenness and public order offences. The Police Commissioner should consider whether this reflects upon police training

generally or a need for further training of Senior Sergeant Hurley and the other officers who gave evidence at this inquest.

9. The Police Commission should give particular attention to the training of officers working in Aboriginal communities. Such training should be provided prior to any service in Aboriginal communities and should deal specifically with the recommendations of the RCIADIC and how these are relevant to policing and the exercise of discretion to arrest. Training should include 'experiential training' based on the Kowanyama trial, as identified in the Cape York Justice Study.

10. Immediate attention should be given by the Queensland Government to the proper funding and support of the Community Justice Group on Palm Island.

DIVERSIONARY CENTRES AND COMMUNITY PATROLS

11. Urgent attention should be given by the Queensland Government to the establishment of a diversionary centre on Palm Island to provide an alternative to police custody for people who come to the attention of police while intoxicated.

12. Such a centre should be established following consultation with the Palm Island community and its design and operation must be responsive to local conditions and needs.

13. The establishment of a diversionary centre should be accompanied by the development of a protocol with the Queensland Police Service, in conjunction with the Palm Island community, as to its use as an alternative to detention.

14. The establishment of a diversionary centre should also be accompanied by training of police officers working on Palm Island as to the use of the centre as an alternative to detention.

15. Urgent attention should be given by the Queensland Government to the establishment of a community patrol on Palm Island.

16. The structure and functions of such a community patrol should be developed following consultation with the Palm Island community.

17. It is vital that any community patrol that is implemented on Palm Island is adequately supported and funded to ensure its success.

ASSESSMENT AND MONITORING OF HEALTH

18. There was no assessment of Mulrunji's health upon being received into police custody at the Palm Island Watchhouse. There was no adequate reason for this failure.

19. The OPM should be amended to fortify the direction given to police in relation to the conduct of a thorough initial health assessment of any person brought into police custody. In particular, the OPM should note that where a person taken into custody is unable initially to be properly assessed because they are violent, aggressive or non-cooperative, consideration must be given to conducting an assessment by another means (such as through the cell door) or having another officer conduct the assessment. In the event that an assessment still cannot be conducted, further attempts must be made at the earliest available opportunity.

20. The OPM should be urgently reviewed with a view to providing a much greater level of practical guidance to officers on how to conduct health assessments and checks of persons in their custody.

21. Pending such review, the OPM should be immediately amended to incorporate the Medical Checklist currently used by Victorian Police. Queensland police should receive training in the use of that checklist and commence using it immediately.

22. The failure to properly assess Mulrunji's health suggests a lack of appropriate training for officers in the conduct of health assessments of people in custody. The Police Commissioner should urgently consider increased and improved training of police officers in relation to health assessments, particularly for officers in charge of watchhouses who should receive more intensive and specialised training.

23. The content and scope of such training should take into account the RCIADIC recommendations, in particular:

- Such training should include information as to the general health status of the Aboriginal population, the dangers and misconceptions associated with intoxication, the dangers associated with detaining

unconscious or semi-rousable persons and the specific action to be taken by officers in relation to those matters; and

- In designing and delivering such training programs, custodial authorities should seek the advice and assistance of Aboriginal Health Services and Aboriginal Legal Services.

SUPERVISION, MONITORING AND CARE IN CUSTODY

24. The Police Commissioner should consider the need for greater training in relation to monitoring equipment of officers who are in positions that may require them to have responsibility for people held in custody,

25. Theoretical and practical training in first aid and resuscitation should be mandatory for all officers who are in charge of a police watchhouse. Wathchhouses should be resourced with appropriate equipment to enable first aid and resuscitation to be provided whilst maintaining proper workplace health and safety standards and protection for police officers.

26. People in custody should not be left unmonitored under any circumstances. The Police Commissioner should conduct an urgent review to ensure that this practice is not undertaken elsewhere in Queensland and that staffing levels are adequate to ensure that persons kept in custody are never left unmonitored.

INVESTIGATION OF MULRUNJI'S DEATH

27. The involvement in the investigation of Mulrunji's death of officers from Townsville and Palm Island was inappropriate and undermined the integrity of the investigation.

28. In all deaths in custody, officers investigating the death should be selected from a region other than that in which the death occurred. The OPM should be amended to require this.

29. The OPM should be amended to require the appointment of the officer in charge of an investigation into a death in custody by the Chief Commissioner, a Deputy Commissioner or Assistant Commissioner.[54]

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[54] Or equivalent rank.

30. The OPM should be amended to make explicit the need to consider, when selecting officers for involvement in an investigation of a death in custody, the impartiality and the appearance of impartiality in the conduct of the investigation.

31. The involvement in the investigation of Mulrunji's death of officers who knew Senior Sergeant Hurley personally, or were friends with him, was inappropriate and compromised the integrity of the investigation.

32. The OPM should be amended to explicitly require officers involved in an investigation into a death in custody to disclose any relationship with an officer involved in, or a witness to, that death.

33. The investigation's appearance of impartiality was further undermined by the following conduct:-

- It was inappropriate for Hurley to meet the investigating officers at the airport upon their arrival;

- It was inappropriate for Hurley to drive the investigators to the scene of Mulrunji's arrest; and

- It was completely unacceptable for investigators to eat dinner at Hurley's house while the investigation was being conducted.

34. The OPM should be amended to more clearly state the need for officers involved in an investigation to consider the impartiality and the perception of impartiality in the conduct of the investigation at all times.

35. The discussion by Senior Sergeant Hurley of the death of Mulrunji with Sergeant Leafe and Police Liaison Officer Bengaroo prior to being interviewed was inappropriate and contrary to the OPM. It had the potential to undermine the integrity of the investigation and undermine the appearance of integrity of the investigation.

36. The OPM should be amended to require the officer in charge of an investigation of a death in custody to instruct officers involved in, or witness to, the death not to discuss the matter with other witnesses prior to being interviewed.

37. Consideration should be given by the Police Commissioner to the training officers receive to ensure they are aware of their obligations under the OPM if involved in deaths in custody. In particular the Commissioner should ensure that officers strictly comply with section 16.24 (vi) to (viii) of the OPM and **immediately** arrange for the next of kin to be notified where a death in custody occurs.

38. The CMC should be actively involved in all investigations into deaths in custody from the outset. Consideration should be given to having a senior officer of the CMC involved in all investigations into deaths in custody.

39. Difficulties in cross-cultural communication between police and Aboriginal witnesses may have impaired the effectiveness of the investigation of this matter by police. Significant attention should be given by the Police Commissioner to the training of officers, particularly those who are working in or near large Indigenous communities such as Palm Island in relation to communication with Indigenous people and the use of support persons and interpreters. This is a matter that is fundamental to the effective and fair administration of justice in Queensland.

40. The OPM should be amended to include, as an appendix, Chapter 9 of the Supreme Court of Queensland Equal Treatment Benchbook on 'Indigenous Language and Communication'. The OPM should direct officers to follow and apply the contents of that chapter to the greatest extent possible.

These comments will be sent to the Attorney General, the Director General and Minister of government with responsibility for police and the Commissioner for police.

Family concerns

Some important matters remain unacknowledged. Mr Callaghan SC has voiced five particular issues which the family feels have not been publicly addressed.

The family asks for acknowledgement that the circumstances leading to Mulrunji's arrest were trivial and more related to the sensitivities of the police officer's standing than the seriousness of the behaviour under scrutiny. It is clear on Senior Sergeant Hurley's evidence that he did not hear the initial conversation between Mulrunji and Police Liaison Officer Bengaroo. But once this was relayed to him he felt that Officer Bengaroo's standing had been challenged. That was when he told Bengaroo that he would lock up Mulrunji. Mulrunji then swore at the police officers as he continued to walk away and Senior Sergeant Hurley executed the arrest. I have already indicated there were other, more appropriate options available. It is a terrible tragedy that such a minor incident could lead to a man's death in custody.

The second and third matters raised by the family were that Mulrunji cried out for help from the cell after being fatally injured, and no help came. The images from the cell video tape of Mulrunji, writhing in pain as he lay dying on the cell floor, were shocking and terribly distressing to family and anyone who sat through that portion of the evidence. The sounds from the cell surveillance tape are unlikely to be forgotten by anyone who was in court and heard that tape played. There is clear evidence that this must have been able to be heard from the police station dayroom where the monitor was running. Indeed the timing of Senior Sergeant Hurley's visit to the cell suggests that the sounds were heard. But the response was completely inadequate and offered no proper review of Mulrunji's condition or call for medical attention. The inspections were cursory and dangerous even had Mulrunji been merely intoxicated. The so called arousal technique of nudging Mulrunji with a foot is not appropriate. It cannot be sanctioned. Any suggestion that it is a safer mechanism for a police officer to check a prisoner who may be feigning sleep is ludicrous. If this were the case, the police officer would still be at risk of being overbalanced if a person were to grab his foot. It was simply the quickest but also a demeaning way in which a police officer might elicit a response.

When there was serious doubt about Mulrunji's health it was alarming to think that there was no-one who either had the skills, the medical or safety equipment or the inclination to implement an attempt at cardio pulmonary resuscitation. There was still uncertainty at that time that Mulrunji had died. We know now from the medical evidence that Mulrunji was beyond saving, but no one knew that when they first examined him.

The fourth matter raised was that Mulrunji's family were misled when they came to the police station to inquire when he would be released and were sent away. It was known that Mulrunji was dead. The most urgent consideration and advice should have been sought to properly, promptly and respectfully inform his family. If Senior Sergeant Hurley was not in a position to inform the family, then another police officer had to assume that responsibility. It is perhaps another indication that all was not well on Palm Island that the police were not in a position to immediately liaise with a local person of standing in the community to assist in speaking with the family in such difficult circumstances.

The fifth matter concerned the investigation. It is reprehensible that the initial police investigations into the death were so obviously lacking in transparency, objectivity and independence. Even in a remote and isolated situation, the most important priority was to investigate the matter properly. It is regrettable that even in these proceedings some senior police officers have not been prepared to acknowledge the lack of sensitivity shown in the investigation and how it must damage public confidence. Until the challenge is accepted to work with the community towards a better relationship, the police are likely to remain in a very difficult working environment on Palm Island. This is regrettable, as I remain confident there are always possibilities for a better future to be realised for *all* the people living and working on a very beautiful island.

<u>Section 48 reference to prosecuting authorities</u>

There remains the issue of the coroner's responsibility to refer information to prosecuting authorities. Section 48 of the *Coroners Act 2003* states that if a coroner reasonably suspects a person has committed an offence, the coroner must give the information to the prosecuting authority. If it is a more serious indictable offence, then the information is to be provided to the Director of Public Prosecutions. For any other offence, the information must be given to the chief executive of the relevant government department. The information excludes any evidence given to the inquest after a person has been required to do so via section 39(2).

If a reasonable suspicion is held about official misconduct or police misconduct under the *Crime and Misconduct Act 2001* then information must be given to the Crime and Misconduct Commission.

An inquest is no longer part of the criminal law process under the new Coroners Act. An inquest does not encompass charging any person with a criminal offence or a committal to another court for trial or sentence. That is the responsibility of the prosecuting authority according to the relevant test. The matters in issue in this inquest have been clearly identified and evidence given in the context of making factual findings in this inquest.

At an earlier time in these proceedings I referred to the case of *R v Tennent; ex parte Jager,*[55] which might provide some guidance on the issue of whether the coroner can make a public statement concerning the referral of anyone to another prosecuting authority.

His Honour Chief Justice Cox expressed the view that there was an impediment to doing so. There His Honour said:-

> *"The focus of an inquest conducted under the Act, being the ascertainment of facts without deducing from those facts any determination of blame, and the mischief sought to be avoided, being the public naming of persons as suspected of criminal activity when they may never be charged, submissions to the Deputy State Coroner that he or she should form belief that a named person has committed an indictable offence in connection with a death being investigated by the Deputy State Coroner would serve little purpose but to frustrate the intention of Parliament."*[56]

This is consistent with the prohibition in section 45 of the Coroners Act which states that the coroner must not include in the findings any statement that a person is, or may be guilty of an offence or civilly liable for something.

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[55] [2000] TASSC 64
[56] P 3-4

The weight of authority is against any public submissions that a person be referred to the Director of Public Prosecutions for consideration of charges being brought against them.[57]

The State Coroners Guidelines do not specifically refer to the detail of how a coroner refers a matter to the DPP, although a ruling by the State Coroner in the matter of Michael Eddy indicated the State Coroner's view that:-

"if a coroner chooses to make such a referral, he/she should not include that fact in his /her findings or comments as that would offend against the prohibition in s45(5)or s46(3)."[58]

There is the competing interest of the family of the deceased who have a legitimate interest in knowing how the coroner has discharged this statutory obligation, if it arises. I simply indicate that I will consider my statutory obligation to inform prosecuting authorities, which would include informing the legal representatives of parties who may be affected and the family of the deceased. I emphasize that any decision to prosecute rests solely with other authorities.

Finally, I thank all those that have assisted the court in the investigation of these events and the conduct of the inquest.

Despite the many difficulties faced by people living and working on Palm Island, I am grateful to say that the court received enormous assistance in conducting the inquest on the island. I note the help from both the local indigenous people of Palm Island and also the many dedicated police and community workers who also live and work there.

Thank you also to those people who greatly assisted both the witnesses and the court in helping witnesses feel a little more comfortable giving their evidence. More effective communication was achieved with this support.

I thank my two Counsel Assisting, and instructing solicitors and to all counsel for their efforts and generosity of time and availability in this inquest. Thank you

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[57] Annetts v McCann, (1990) 170 CLR 596

R v Tennet Ex Parte Jager [2000] TASSC 64

[58] [page 1, ruling in the inquest into death of Michael Eddy, 1 February 2006.]

especially to Mr Daniel Grice, Depositions Clerk who has cheerfully and capably managed an enormous logistical task and to Inspector Aspinall.

Finally, to Mulrunji's family, his partner Tracey, and his sisters, Jane, Elizabeth and Valmai, I extend my condolences for your loss. I hope this inquest has provided some answers. It is to be hoped that Mulrunji's tragic death may yet lead to some positive changes and reduce the likelihood of similar deaths in custody.

The inquest is now closed.

Chris Clements

Acting State Coroner

27 September 2006

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